It was contended by counsel for EAC that because of the subsistence of the hire-purchase agreement the defendants are not the owners of the machine and that being the case they cannot pass a better title than they actually possess. Further as the chargor of the land is one Ibrahim bin Medan and as no evidence has been furnished to disclose his relationship with the defendants this non-disclosure brings the case within the exception that what is annexed to the land is not necessarily affixed to it. Counsel's argument, as I understand it, is that by virtue of the hire-purchase agreement the machine cannot be treated as a fixture and continues to be a chattel and that in any case since what has been charged to MIMB is not the defendants' property as such but that of Ibrahim bin Medan MIMB cannot acquire what does not belong to the defendants. In this particular case I do not think it is relevant to consider who the actual chargor of the above-mentioned land is. What is important is that the land as such has been legally charged to MIMB and MIMB accordingly has all the rights of the chargee as stipulated in the charge document. The only point I have to decide is whether the machine forms part of the land held under the charge by acquiring the character of a fixture. That land comprises fixtures is clear from the definition of "land" in section 5 of the National Land Code which includes "all things attached to the earth or permanently fastened to any thing attached to the earth, whether on or below the surface." That the English law relating to fixtures applies to Malaysia is clear from the judgment of Ong J. (as he then was) in *The Shell Company of the Federation of Malaya Ltd.* v. *Commissioner of the Federal Capital of Kuala Lumpur.*[1] This case also quotes with approval a passage of Blackburn J. delivered in *Holland* v. *Hodgson*[2] as follows: —

"Perhaps the true rule is, that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to shew that they were intended to be part of the land, the onus of shewing that they were so intended lying on those who assert that they have ceased to be chattels, and that, on the contrary, an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such as to shew that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel."

The machine, as has been stated before, is affixed to the floor and ground of the defendants' premises by bolts and these premises were comprised in the land charged to MIMB which had no notice or reason to believe that the fixtures thereon did not belong to the defendants or that there were prior encumbrances. In the case of *Reynolds* v. *Ashby & Son,*[3] the House of Lords considered the character of machines supplied by their owner to the lessee of a factory on hire-purchase terms. The machines were affixed to concrete beds in the floor of the factory by bolts and nuts and could have been removed without injury to the buildings or the beds. The lessee made default in payment and the owner brought an action to recover the machines or their value from a mortgagee of the premises who had taken possession. It was held that the machines had been so affixed as to pass by the mortgage to the mortgagee. Lord Lindley at page 473 of the judgment stated: —

"There is a long series of decisions of the highest authority shewing conclusively that as between a mortgagor and a mortgagee machines, fixed as these were to land mortgaged, pass to the mortgagee as part of the land."

Although the point was made by the counsel for EAC that this and other authorities referred to by counsel for MIMB relate to a mortgage as distinct from a charge I take the view that the principles relating to what constitutes a fixture must be the same whether they relate to land which is mortgaged or to land which is charged. In the result I am of the view that the Senior Assistant Registrar was right in deciding that MIMB had a prior claim as against EAC to the machine.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Chooi & Co.; Shook Lin & Bok.*

TAN HOE WATT v. PUBLIC PROSECUTOR

[A.Cr.J. (Mohamed Zahir J.) June 23 & November 25, 1979]
[Kota Bharu — Criminal Appeal No. 7 of 1977]

Criminal Law and Procedure — Whether Magistrate has discretion to take cognizance of offence on complaint or whether it is mandatory on his part to take such cognizance — Procedure Magistrate should follow where there is a complaint under Criminal Procedure Code (F.M.S. Cap. 6) s. 133.

In this case the appellant appealed against the decision of the learned President Sessions Court, Kota Bharu as to the part in which the learned President directed the appellant to be accompanied by his counsel to lodge a Police report to the police regarding complaints of assault and criminal intimidation instead of examining the appellant under section 133 of the Criminal Procedure Code. The issue to be decided in this case was whether the President had the discretion to take cognizance of an offence on complaint or whether it was mandatory on his part to take such cognizance.

Held: (1) a Magistrate is not bound under the law immediately upon a complaint either orally or in writing by any complainant to proceed to take cognizance of the complaint;

(2) before it can be said that a Magistrate had taken cognizance of an offence under section 133 he must have applied his mind to the offence for the purpose of proceeding with the matter;

(3) in this case the President was not bound to examine the complainant on oath unless he first had taken cognizance of the offence complained of;

(4) in such cases the Magistrate should adopt the following procedure: (a) if the complaint is made in writing then proceed to take cognizance if warranted and proceed as under sections 136 and 137 of the Criminal Procedure Code; (b) if the complainant makes an oral complaint either in open court or in chambers, then if the Magistrate is not having other important or urgent matter then proceed to hear the complaint and take cognizance if needs be. Otherwise request the complainant to make a written complaint and thereafter proceed as under (a) above; (c) if the oral complaint is made by a person who is being produced before the Magistrate for remand or for an extension of remand, where there is difficulty in filing a written complaint and where there is allegation of police assault, then the Magistrate should proceed to hear the complaint straight-away if he is free and if he is not free then fix another earliest available date to hear the complaint. The Magistrate may advise the complainant to lodge a police report if he has not done so and order that the complainant be medically examined if there is an allegation of assault. If there is any difficulty of getting an early date of hearing, the Magistrate should consult the President Sessions Court with a view of getting another Magistrate to hear the complaint; (d) in a case where there is allegation of police assault connected with a cautioned statement made by the com-

plainant, the case should be heard earlier than the one which the complainant is himself charged with; (e) if the complainant makes the complaint at the beginning of the hearing of the case in which the complainant is an accused person then preferably the Magistrate should not take cognizance of the complaint as in not making the complaint earlier, the complainant obviously seeks to delay the trial. The complainant can nevertheless file the complaint even after the criminal case against him has been completed.

Cases referred to:-

(1) *R.R. Chari* v. *State of Uttar Pradesh* A.I.R. 1951 S.C. 207.

(2) *Superintendent and Legal Remembrancer of Legal Affairs, W.B.* v. *Abani Kumar* A.I.R. 1950 Cal. 437.

MAGISTRATES' CRIMINAL APPEAL.

Datuk H.L. Wrigglesworth for the appellant.

Mohamed Apandi bin Ali (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Mohamed Zahir J.: The appellant appeals against the decision of the learned President Sessions Court, Kota Bharu as to the part in which the learned President directed the appellant to be accompanied by his counsel to lodge a Police Report to the Police regarding complaints of assault and criminal intimidation instead of examining the appellant under the provisions of section 133 of the Criminal Procedure Code.

The matter arose from the production of the appellant as an accused person before the Sessions Court on May 8, 1977 on two charges under sections 392 and 384 of the Penal Code. On this date counsel for the appellant made these applications to the President: (a) that the cases be jointly tried, (b) that the appellant be allowed to make a complaint to the court and (c) for bail. The court arising from this application made the following order: —

(1) The accused be released on bail of $5,000 one surety on each of the charges;

(2) The question of joint trial will be decided on the date of hearing after Prosecuting Officer has received further instructions from Deputy Public Prosecutor;

(3) The police give a report to the court as to why the accused was not remanded in prison as directed by the court;

(4) Dato' Wrigglesworth, counsel for accused, give a report as to why the accused while in police custody and in hospital failed to inform the court earlier that his client was in police custody;

(5) The accused be accompanied by his counsel to the office of the O.C.P.D. so that a further report be lodged on assault and intimidation.

The appellant is now appealing against Order No. 5 above. But there appears to be no order made on the appellant's application that he be allowed to make a complaint, presumably to the same court. However, there is a definite refusal to receive such complaint. The findings of the learned President of Sessions Court on which he based his order are as follows: —

(1) accused has given undertaking not to leave Kota Bharu;

(2) there is no allegation that police would not carry out investigation and there is no allegation that police investigation would be partial and would prejudice the accused's cause of action;

(3) even if the accused's allegation is refuted by the police and investigations are futile the accused's remedy to bring a civil or a private summons is not precluded and his remedy to seek other venues are still open.

Now the appellant is saying that the learned President had refused his application for an enquiry under section 133 of the Criminal Procedure Code. Before we proceed further, I would like to dispose of that part of the appeal where the appellant to be accompanied by appellant's counsel was ordered to lodge a police report of the alleged assault and intimidation. In the arguments before me the learned Deputy Public Prosecutor did not strenuously argue for the propriety of this part of the order. I for myself do not think the President has any power to order anyone to go and lodge a police report. I think the discretion should be left to the appellant himself. There is no right for the court to order him to do so and there is no provision under the law to enable the court to make such an order. I recollect one Magistrate ordering an accused person as punishment to write a few hundred times that he will not commit the offence again just like a school master ordering one of his pupils to write 100 times not to forget to bring his Atlas to the school. This order on appeal was set aside as there is no provision under the Criminal Procedure Code to empower the Magistrate to do so although I must admit it is not a bad idea if Magistrates are to be given power to award such order.

Thus, in this case, I think that part of the order that the appellant accompanied by his counsel to go and lodge a police report should be set aside.

Now as regards the other part of the order. The learned President held in his grounds of judgment that after making enquiries from the O.C.P.D. who told the court that the matter was referred to the Deputy Public Prosecutor and which was not challenged by counsel for the appellant to suggest malice or bias on the part of the police, he came to the conclusion that such enquiry was not necessary as then there would be two concurrent enquiries: one by the court and the other by the police. He considered an enquiry by the court is premature, waste of time and unwise as in any event the appellant can still bring a private summons against the persons concerned.

I think the issue to be decided in this case is simply whether the President has a discretion to take cognizance of an offence on complaint or whether it is mandatory on his part to take such cognizance.

Counsel for the appellant quoted *Mallal's* Criminal Procedure Code 4th Ed. page 181 and also quoted Indian authorities which are:

(a) Code of Criminal Procedure Vol. I 5th Edition at page 1010 by V.V. Chitaley & K.N. Annaji Rao;

(b) Code of Criminal Procedure 12th Ed. at page 852 by B.B. Mitra;

(c) Criminal Procedure Code 10th Ed. at page 191 by Ratanlal & D. Thakore.

Section 200 of the Indian Criminal Procedure Code reads as follows: —

"A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate."

Our own section 133 of the Criminal Procedure Code reads as follows: —

"(i) When a Magistrate takes cognizance of an offence on complaint the Magistrate shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant and also by the Magistrate.

(ii) This section shall not apply to a complaint of an offence where a summons is applied for in a summons case made by a police officer or by a public servant acting in his official capacity."

A Magistrate can only take cognizance of an offence as empowered by the law. The empowering section of the Criminal Procedure Code is section 128(i) of the Code which reads as follows: —

"(i) Subject to the provisions of this Code a Magistrate may take cognisance of an offence —

(a) upon receiving a complaint as defined by this Code;

(b) upon his own knowledge or suspicion that such offence has been committed;

(c) whenever it appears to the Public Prosecutor that an offence has been committed and he, by warrant under his hand, requires a Magistrate to inquire into the same and such Magistrate receives the warrant;

(d) on any person being brought before him in custody without process accused of having committed an offence which such Magistrate has jurisdiction either to inquire into or to try."

Section 129(i) restricts the Magistrate Court from taking cognizance in certain cases. The section reads as follows: —

"(i) Except in the case of complaints laid by the Public Prosecutor no court shall take cognisance —

(a) of any offence punishable under sections 172 to 188 of the Penal Code except with the previous sanction of the Public Prosecutor or on the complaint of the public servant concerned or of some public servant to whom he is subordinate;

(b) of any offence punishable under sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the Penal Code except with the previous sanction of the Public Prosecutor or when such offence is committed in or in relation to any proceeding in any court on the complaint of such court;

(c) of any offence described in section 463 or punishable under section 471, 475 or 476 of the Penal Code except with the previous sanction of the Public Prosecutor, or when such offence has been committed by a party to any proceeding in court in respect of a document given in evidence in such proceeding on the complaint of such court."

Sections 130, 131 and 132 further restrict the power of taking cognizance in those cases by the Magistrate Court unless certain conditions have been fulfilled.

In the instant case it would appear from the record, counsel for the appellant applied from the Bar to the President to take action under section 133 of the Criminal Procedure Code so that the President took cognizance of an offence of assault and criminal intimidation by police officers against the appellant and to examine him on oath as required by the said section. It would mean therefore if this is interpreted as mandatory on the part of the Magistrate to take such cognizance, he should discontinue other work scheduled for the day which might be more urgent or pressing and proceed to examine the complainant straight away in view of the words "at once" written into the section.

Supposing that the complainant is also the accused in the case to be heard by the Magistrate for the day then if it is mandatory for the Magistrate to hear his complaint, then it would entail the case against the complainant to be postponed to be heard most probably by another Magistrate. I would say this would be ridiculous if it were to be the position.

I understand the practice in the past has been for the complainant to file a written complaint and appear before the Magistrate in Chambers. The complainant sets out the facts and the law regarding the case in the complaint. He then affirms the complaint on oath before the Magistrate and then signs it. The complaint would invariably contain a prayer for a summons be issued under, for instance, section 323, 325 or 447 of the Penal Code where a private person is empowered to prosecute the case personally. The Magistrate, after having satisfied with the allegations in the complaint, could order a summons be issued as applied for. The case is then registered and a summons issued and the case heard on a day fixed (see *Mallal's* Criminal Procedure 4th Ed. page 11).

But section 133 of the Criminal Procedure Code includes also oral complaints made by a person either in chambers or in the open court. If an oral complaint is made then the Magistrate when taking cognizance of such offence should proceed to reduce it into writing to be signed by the complainant and the Magistrate himself thereby turning it into a written complaint.

I am of the opinion a Magistrate is not bound under the law immediately upon a complaint either orally or in writing by any complainant to proceed to take cognizance of the complaint. I say this after reading the words: "When a Magistrate takes cognizance of an offence on complaint." It means that only after he took cognizance he "shall at once examine the complainant on oath". It follows that if he has not yet taken such cognizance he is not bound to examine the complainant on oath at once.

The solution to this problem depends on the interpretation of the words: "When a Magistrate takes cognizance of an offence on complaint..." *Sohoni's* Code of Criminal Procedure 1973, Vol. II, 17th Ed. page 1491 has this to say: —

"The word 'cognizance' is defined in Wharton's Law Lexicon, 14th edition, as 'the hearing of a thing judicially.' It has been held that cognizance, therefore, has a reference to the hearing and to the determination of the case in connection with the commission of an offence and not merely to a Magistrate's learning that some offence has been committed and his ordering that the matter be investigated. A Magistrate takes cognizance of an offence when he decides to proceed against the person accused of having committed that offence and not at the time when the Magistrate is just informed either by complaint or by police report about the commission of an offence. In the Full Bench case of *Banwari Gope* v. *Emperor*, there occurs a passage:

'As soon as the Magistrate takes cognizance of an offence, there is a criminal case against the accused person, and at that point of time he acquires such right of appeal or revision, as the case may be, as the law confers upon him'."

Before it can be said that a Magistrate has taken cognizance of any offence under this section he must have applied his mind to the offence for the purpose of proceeding with the matter. The Code of Criminal Procedure by B.B. Mitra, 14th Edition at page 671 has this to say: —

"Taking cognizance of an offence:- This expression has not been defined in the Code. In its broad and literal sense it means 'taking notice of an offence' and would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes — Pannalal, 52 Cr.L.J. 1376 (Hyd.)."

To apply the above principle to the instant case, it cannot be said that the learned President has taken cognizance of the offence and he is therefore not bound to examine the appellant on oath at once.

Section 190(1) of the Indian Code reads as follows: —

"Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Subdivisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence —

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police officer;

(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed."

The words "may take cognizance" have been held in India after a number of conflicting decisions that the Magistrate is not bound to take cognizance on such complaint and proceed to hear the complainant on oath. Although the word "may" is used in this section which gives the Magistrate a discretion, yet it is a judicial discretion appealable to higher courts.

In the case of *R.R. Chari* v. *The State of Uttar Pradesh*[1] their Lordships of the Supreme Court quoted with approval the following observations of Das Gupta J. in *Superintendent and Legal Remembrancer of Legal Affairs, W.B.* v. *Abani Kumar*[2]: —

"It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence under section 190(1)(a), Criminal P.C., he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this chapter, — proceeding under section 200 and thereafter sending it for inquiry and report under section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this chapter but for taking action of some other kind, e.g. ordering investigation under section 156(3), or issuing a search warrant for the purpose of investigation he cannot be said to have taken cognizance of the offence."

This has been held to be the correct approach to the question before the court. The conflict must now be held to have been set at rest by these observations of their Lordships of the Supreme Court which clearly imply that a Magistrate is not bound to take cognizance on a complaint (see Code of Criminal Procedure by V.V. Chitaley & K.N. Annaji Rao, 5th Ed. Vol. 1 page 837).

Thus, in my view, in this case the learned President was not bound to examine the complainant on oath unless he first had taken cognizance of the offence complained of. So before taking such cognizance he can request the complainant to file a written complaint or to report the matter to the police if the complainant has not yet done so. Only after he had taken cognizance he is bound to examine the complainant on oath. But if he learns that the complainant has not yet lodged a police report, then I see there is nothing unlawful for the Magistrate to advise counsel for the complainant, if he has engaged one, to go with the complainant to the Police Station and make a report. But I do not think he should make an order. Anyway, it is for counsel to go to the Police Station with his client to lodge the report instead of waiting for the request by the Magistrate. It is in the interest of the complainant himself to do this as this police report is provided for under section 107 of the Criminal Procedure Code and has evidential value.

It should also be borne in mind that a Magistrate can take cognizance in those cases enumerated under section 128 of the Criminal Procedure Code and sections 129 & 130 restrict the power of a private person to prosecute in criminal cases personally. Section 377 of the Criminal Procedure Code imposes further restriction on such powers. Section 377 reads as follows: —

"377. Every criminal prosecution before a High Court and every criminal prosecution for a seizable offence and every inquiry before a Magistrate shall, subject to the following sections, be conducted —

(a) by the Public Prosecutor or a Deputy Public Prosecutor, or an advocate or, in the State of Trengganu, a pleader employed by the complainant and expressly authorised in writing by the Public Prosecutor or by a Deputy Public Prosecutor acting under the general control and direction of the Public Prosecutor to conduct such prosecution or inquiry;

(b) by a police officer not below the rank of Inspector, acting on behalf of the Public Prosecutor."

Thus, all seizable offences as our law stands are to be at the control and direction of the Public Prosecutor leaving only summons case to private persons. In the instant case, the complainant complained of assault and criminal intimidation. Assault, which is under section 452 of the Penal Code is a summons case and the Magistrate can therefore take cognizance if initiated by a private person. But criminal intimidation under section 506 of the Penal Code is a seizable offence and the Magistrate is not empowered to take cognizance unless initiated by the Public Prosecutor. Of course, he could have taken cognizance of the offence under section 352 of the Penal Code only and ignored the other offence. But at the same time, the complainant was in error in bringing before the Magistrate something that the Magistrate was not empowered to hear.

I understand that after amendments to section 113 of the Criminal Procedure Code have been made so as to make a cautioned statement taken by the police admissible as evidence, there are a lot of complaints before the Magistrates against the police of assaults and brutality in getting the statements. Private summons is another method of obtaining a finding by the court that such statement is made under coercion

apart from there being an objection against its admissibility in the trial itself in a trial within a trial.

There are instances where an accused person in the hearing against him when a cautioned statement is being introduced in a trial within a trial alleges that he had earlier made complaints of police assault to the Magistrate before whom he was produced and that the Magistrate informed him to make the complaint during the hearing of the case itself or that he alleges that the Magistrate has done nothing about his complaint. The prosecuting officer would also at times in the trial within the trial cross-examine the accused whether he has made a complaint of police assault, if there is such allegation, before the Magistrate at the time when the accused was produced for remand. The accused would reply in the same manner in that he did make the complaint and that the Magistrate advised him to bring out the matter in the trial itself or that the Magistrate did nothing about it. The position is unsatisfactory. The court in trying the case is placed in a difficult spot. Truth cannot be easily ascertained unless the Magistrate concerned is called as a witness and again he may have forgotten whether or not the accused had made such complaint.

The law provides a procedure as to what to be done in such cases and a complainant should not be deprived of his rights. I suggest in such cases the Magistrate should adopt the following procedure:

(a) If the complaint is made in writing then proceed to take cognizance if warranted and proceed as under sections 136 and 137 of the Criminal Procedure Code;

(b) If the complainant makes an oral complaint either in open court or in chambers, then if the Magistrate is not having other important or urgent matter then proceed to hear the complaint and take cognizance if needs be. Otherwise request the complainant to make a written complaint and thereafter proceed as under (a) above;

(c) If the oral complaint is made by a person who is being produced before the Magistrate for remand or for an extension of remand, where there is difficulty in filing a written complaint and where there is allegation of police assault, then the Magistrate should proceed to hear the complaint straight-away if he is free and if he is not free then fix another earliest available date to hear the complaint. The Magistrate may advise the complainant to lodge a police report if he has not done so and order that the complainant be medically examined if there is an allegation of assault. If there is any difficulty of getting an early date of hearing, the Magistrate should consult the President Sessions Court with a view of getting another Magistrate to hear the complaint;

(d) In a case where there is allegation of police assault connected with a cautioned statement made by the complainant, the case should be heard earlier than the one which the complainant is himself charged with;

(e) If the complainant makes the complaint at the beginning of the hearing of the case in which the complainant is an accused person then preferably the Magistrate should not take cognizance of the complaint as in not making the complaint earlier, the complainant obviously seeks to delay the trial. The complainant can nevertheless file the complaint even after the criminal case against him has been completed.

It should, however, be noted that an accused person alleged to have been assaulted as a result of which a cautioned statement was given has a discretion whether or not to make a complaint before the Magistrate under section 133 of the Criminal Procedure Code as the position will be by becoming a prosecutor he would have to prove his case beyond any reasonable doubt whereas in a trial within a trial he may only create a reasonable doubt in order to succeed. For this reason I see no real purpose for a prosecuting officer in the case against the accused to cross-examine the accused whether he has made a complaint before the Magistrate, because even if he has not made such complaint this is not any indication that there is no such assault if there is indeed one.

It is hoped with the above procedure there will be no uncertainty as to what to be done by the Magistrates when confronted with such cases. In having a fixed procedure as to what should be done will dispel the allegations that the Magistrate has refused to hear a complainant at the trial against him later.

In the circumstances in the instant case, I dismiss the appellant's appeal against the refusal of the learned President in not taking cognizance of the complaint by the appellant under section 133 of the Criminal Procedure Code.

Appeal dismissed.

Solicitors: *Dato Wrigglesworth & Co.*

ABDUL MAHMUD v. PUBLIC PROSECUTOR

[R.Cr.J. (Syed Agil Barakbah J.) February 11, 1980]
[Alor Star — Kedah Criminal Revision No. 4 of 1980]

Criminal Law and Procedure — Procedure in determining whether cautioned statement is voluntary — Criminal Procedure Code (F.M.S. Cap. 6), s. 113.

In this case the learned Magistrate held a trial within a trial to determine the voluntariness of a cautioned statement. The learned Magistrate called the accused first to give evidence and thereafter the prosecution witness concerned. Thereafter he made a finding that the cautioned statement was voluntarily made and admitted it in evidence.

Held: the learned Magistrate in this case had adopted the wrong principle and the wrong procedure. It is for the prosecution to establish the voluntariness of the cautioned statement and therefore the prosecution should begin. The accused would be entitled to cross-examine the prosecution witnesses and thereafter to give evidence in support of his objection. At the close of the case, the Court then makes a decision whether the cautioned statement was made voluntarily or not.

CRIMINAL REVISION.

Syed Agil Barakbah J.: My attention has been drawn to this case which was heard by the learned Magistrate, Jitra on the 27th of November 1979. The accused was convicted under section 379 of the Penal Code, and sentenced to one year imprisonment after